

ARKANSAS SUPREME COURT

No. CR 09-317

FRANCES RENEE PERRY
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 28, 2009

PRO SE MOTIONS FOR
APPOINTMENT OF COUNSEL, FOR
EXTENSION OF BRIEF TIME AND
FOR COPY OF RECORD AT PUBLIC
EXPENSE [CIRCUIT COURT OF
PULASKI COUNTY, CR 2003-993,
HON. CHRIS PIAZZA, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2006, appellant Frances Renee Perry was charged with violating the Arkansas Hot Check Law, and probation was revoked in three prior violation cases. Appellant was sentenced to thirty-six months' imprisonment. A corrected judgment and commitment order was entered on April 20, 2006, and no appeal was taken.

In 2009, appellant filed in the trial court a motion to correct a clerical mistake in the commitment order. Therein, she maintained that the 2006 corrected judgment should have stated that appellant entered a plea of not guilty rather than guilty. A circuit court can enter an order *nunc pro tunc* at any time to correct clerical errors in a judgment or order. A circuit court's power to correct mistakes or errors is to make "the record speak the truth, but not to make it speak what it did not speak but ought to have spoken." *Lord v. Mazzanti*, 339 Ark. 25, 29, 2 S.W.3d 76, 79 (1999). This power embodies the common law rule of *nunc pro tunc* orders, which is applicable in both civil

and criminal cases. See *State v. Rowe*, 374 Ark. 19, ___ S.W.3d ___ (2008).

The trial court denied the motion, and appellant, proceeding pro se, has lodged an appeal here from the order. Now before us are appellant's pro se motions for appointment of counsel, for an extension of time to file her brief-in-chief and for a copy of the entire record in this matter to be provided to her at public expense. As appellant could not be successful on appeal, the appeal is dismissed and the motions are moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam).

Here, the 2006 corrected judgment noted that appellant entered a plea of guilty directly to the court and there is no basis to find that the trial court erred in denying appellant's motion to correct that notation. The trial court attached appellant's plea statement to the order of denial. The plea statement, signed by appellant, states without equivocation that she was guilty in the revocation proceedings. She also stated therein that she freely, knowingly and voluntarily waived her rights and understood the punishment range for the charges filed against her. Appellant provided no factual basis to support her contention that she did not enter a guilty plea in 2006.

Appeal dismissed; motions moot.